BOOK 2832 PAGE 692

Johnston County, North Carolina
CRAIG OLIVE Register of Deeds
The following certificate(s) of
CHARLOTTE ROBINSON

notary/notaries public
is/are certified to be correct.
Joan B Plowman
Deputy - ~~Assistant~~ - Register of Deeds

FILED
JOHNSTON COUNTY
CRAIG OLIVE
REGISTER OF DEEDS

FILED	Jan 24, 2005
AT	03:30:00 pm
BOOK	02832
START PAGE	0692
END PAGE	0696
INSTRUMENT #	55058

STATE OF NORTH CAROLINA

JOHNSTON COUNTY

CONSERVATION EASEMENT

George A. Howard 1101 Haynes St. Raleigh, N.C 27604
Restoration Systems Suite 107

Prepared by and return to: William P. Aycock, II, Esquire
P. O. Box 21847, Greensboro, NC 27420

THIS CONSERVATION EASEMENT DEED, made this 24th day of January, 2005, by and between **~~RESTORATION SYSTEMS, LLC~~**, a North Carolina limited liability ~~company~~ whose mailing address is 1101 Haynes Street, Suite 107, Raleigh, North Carolina 27604, Grantor, and **NORTH CAROLINA WILDLIFE HABITAT FOUNDATION**, a North Carolina non-profit corporation, whose mailing address is P. O. Box 29187, Greensboro, North Carolina, 27429-9187 ("NCWHF"), Grantee.. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program within the Department of Environment and Natural Resources for the purposes of funding, acquiring, maintaining, restoring, enhancing, and creating wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Beulah Township, Johnston County, North Carolina (the "Grantor's Property"), and being more particularly described in deed recorded in **Deed Book 2473 at Page 365** of the Johnston County Registry, North Carolina; and

WHEREAS, the restoration, enhancement, creation, and preservation of Grantor's Property is a condition of the funding provided by the N.C. Ecosystem Enhancement Program. Grantor and Grantee agree that third-party rights of access, monitoring, enforcement and completion of any project encumbered by this conservation easement shall be held by the N.C. Ecosystem Enhancement Program (to include any

successor State agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under this conservation easement; and

WHEREAS, upon receipt of the appropriate permits, Grantor intends to remove the Lowell Dam which is located across the portion of the Little River on the Grantor's Property; and

WHEREAS, Grantor is willing to grant a Conservation Easement on Grantor's Property, thereby restricting and limiting the use of Grantor's Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over Grantor's Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being all of the tract of land being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

The purposes of this Conservation Easement are to preserve, maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area a condition consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its successors, and assigns, lessees, agents, and licensees.

II. RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited or restricted as indicated:

> No dam or similar structure of any type shall be constructed over, on or across the portion of the Little River located within the Easement Area nor shall there be any alteration, modification or removal of any in-stream structures or other improvements that may be placed or located in, on or adjacent to the portion of the Little River within the Easement Area in connection with the restoration, enhancement, creation and/or preservation of stream and riparian mitigation within the Easement Area.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Grantor's Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include utilization of heavy equipment to remove any dam or in-stream structures installed in violation of the above-described restriction and to direct in-stream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the

Grantor's Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Ecosystem Enhancement Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. This Easement shall be binding upon the Grantor, its successors and assigns.

D. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

E. Grantor shall notify Grantee in writing of the name and address and any party to whom the Grantor's Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Grantor's Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

Except as specifically set forth herein, Grantor reserves all rights accruing from ownership of Grantor's Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are not expressly prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

RESTORATION SYSTEMS, LLC, a North Carolina limited liability company

By: _____
Name: George A. Howard
Title: Manager

STATE OF North Carolina

COUNTY OF Wake

I, Charlotte Robinson, a Notary Public, do hereby certify that George A. Howard, a Manager of RESTORATION SYSTEMS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution and sealing of the foregoing instrument as Manager on behalf of and as the act of the company referred to in this acknowledgment.

WITNESS my hand and official seal this the 24th day of January, 2005.

Charlotte Robinson
Notary Public

My commission expires:

May 17, 2009

CHARLOTTE ROBINSON
Notary Public, North Carolina
Wake County
My Commission Expires
5-17-09

EXHIBIT "A"

BEGINNING at an iron pipe set near the southern bank of the Little River, which iron pipe is located the following courses and distances from an existing iron pipe within the right-of-way of Lowell Road (N.C. State Road #2335), the southwesternmost corner of the property shown on Plat Book 59, Page 381, Johnston County Registry: South 66° 15' 00" East 36.58 feet to an iron pin set; North 71° 39' 53" East 127.69 feet to an iron pin set; North 20° 14' 59" East to an iron pin set; North 69° 45' 01" West 17.0 feet to the point and place of BEGINNING; thence from said beginning point, crossing the Little River, North 20° 14' 59" East 278.00 feet to a non-monumented corner; thence South 69° 45' 01" East 117 feet to a non-monumented corner; thence crossing the Little River, South 20° 14' 59" West 278 feet to an iron pin set near the southern bank of the Little River; thence North 69° 45' 01" West 100 feet to an iron pin set; thence North 69° 45' 01" West 17.0 feet to the point and place of BEGINNING and containing .75 acres, more or less, and as shown on a survey for Restoration Systems, LLC, prepared by K2M Design Group, P.A., dated March 5, 2003 (DWG. NO:RRS364MR03).

TOGETHER WITH a 100-foot permanent non-exclusive easement for ingress, egress, regress, general utility and construction purposes more particularly described as follows: BEGINNING at an iron pin set in the eastern right-of-way of Lowell Road (N.C. State Road #2335), which iron pin is located North 25° 30' 08" East 434.77 feet from an existing P.K. nail located at the intersection of the center line of Lowell Road (N.C. State Road #2335) and Bagley Road (N.C. State Road #2339); thence from said beginning point, North 71° 39' 53" East 207.56 feet to an iron pin set; thence North 71° 39' 53" West 65.11 feet to an iron pin set; thence North 20° 14' 59" East 60.63 feet to an iron pin set, the southeastern corner of the property described above; thence with the southern line of the above-described property, North 69° 45' 01" West 100.0 feet to an iron pin set; thence South 20° 14' 59" West 12.48 feet to an iron pin set; thence South 71° 39' 53" West 127.69 feet to an iron pin set; thence South 71° 39' 53" East 20.40 feet to an iron pin set in the eastern margin of Lowell Road (N.C. State Road #2335); thence with the eastern margin of Lowell Road, the following courses and distances: South 04° 01' 02" West 10.77 feet to an iron pin set; South 16° 23' 04" West 44.61 feet to an iron pin set; South 22° 59' 04" West 71.08 feet to the point and place of BEGINNING and containing .56 acres, more or less, and as shown on the same survey described above.